

We had a pretrial on July 5th. I'll run through the stipulations. The county claimed is Neosho County. The date of accident alleged is August '99 and continuing. I show the Respondent denying that the Claimant met with personal injury by accident on the day in question; denying that the

accidental injuries arose out of the course of employment; and denying notice.¹

The Appeals Board finds that there is no stipulation to a date or dates of accident in the record. Respondent listed such a stipulation in its submission letter to the ALJ. Claimant, however, did not.² Furthermore, although the ALJ's Award shows a stipulation to a series of accident dates ending September 30, 1999, and does not list date of accident as an issue, the ALJ nevertheless made a specific finding that claimant's date of accident was December 6, 1999, the date of claimant's surgery, and the ALJ's award calculation was based upon this December 6, 1999 accident date. Thus, the ALJ apparently did not consider there to be a stipulation to claimant's date of accident and neither does the Board.

ISSUES

Judge Frobish awarded benefits based upon a 15 percent permanent partial general disability finding claimant had proven she gave respondent timely notice of her accidental injury. On appeal, the issues are:

1. What is the date or dates of accident?
2. Did claimant provide respondent with notice of her accidental injury within 10 days and, if not, was there just cause to extend the time for giving notice to 75 days?
3. What is the nature and extent of claimant's disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Claimant has worked for respondent since February 1991. All her jobs required substantial use of a computer or word processor, typing on a keyboard. In August of 1995 claimant transferred from a clerk's position with the Neosho County District Court to the Southeast Kansas Public Defender's office.

2. Claimant alleged she suffered a series of accidents beginning "on or about August 1999 and continuing through present."³ Approximately late 1994 or early 1995, claimant began noticing symptoms in her hands and wrists. She described this as:

"Numbness, my fingers from my, this knuckle here would be cold (indicating). They would get cold and numb. Tingling. A pain kind of up through the top

¹ Reg. H. Tr. at 4.

² See K.A.R. 51-3-5.

³ Form K-WC E-1 filed 2-28-00. See also Reg. H. Tr. at 4.

of my arm here (indicating) when I would type for an extended period of time."⁴

3. Claimant aggravated her condition in July 1999 when she was working on a particularly difficult project. From that point on claimant's symptoms were worse. Her symptoms continued and on September 30, 1999 she sought medical treatment from Dr. Reuben J. Burkman. He prescribed splints to wear at night and referred her to Dr. Harold Goldman for an EMG. This was performed on October 4, 1999 and showed bilateral carpal tunnel syndrome.

4. Claimant says she did not report her injury initially because she did not know it was work related. Claimant also denies being given a personnel handbook or orientation to report accidents at work.

5. Respondent argues that claimant did not report her hand and wrist injuries were work related until on or about February 3, 2000. But by July 1999 claimant's symptoms reached the point where she told her supervisor, David Clark, an attorney, that typing was causing or aggravating her hand problems. Although claimant admits she did not specifically say that she had injured her hands at work, this should have been notice to her supervisor that her work was at least aggravating her symptoms. Respondent argues that claimant's date of accident should be September 30, 1999, when she first sought medical treatment for her injury. Based upon either a December 6, 1999 or a September 30, 1999 date of accident, this July 1999 notice to respondent was timely.

6. Even after claimant first sought medical treatment on September 30, 1999 with Dr. Burkman, she continued to perform her regular job until December 6, 1999, when Dr. James F. Queenan performed carpal tunnel release surgery on the left wrist.

7. The Board finds claimant's date of accident should be the last day claimant worked before her surgery.⁵ The surgery caused claimant to miss work. She remained off work until sometime after December 8, 1999, when Dr. Queenan released her to "return to light duty work as soon as she feels fit."⁶ Claimant's job duties changed somewhat to accommodate Dr. Queenan's temporary light duty restriction. Thereafter, she gradually returned to doing substantially the same work with respondent. Claimant testified she continues to have symptoms and because of this she has self limited or changed her regular job duties with respondent by reducing the amount of keyboarding or typing she performs in a day.

⁴ Reg. H. Tr. at 9.

⁵ Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999).

⁶ Depo. of James F. Queenan, D.O., Exh. 1.

8. The record contains two medical opinions regarding claimant's functional impairment. Claimant was examined by board certified orthopedic surgeon Edward J. Prostic, M.D., at the request of her attorney. Dr. Prostic rated claimant's permanent impairment at 15 percent to the body as a whole pursuant to the Fourth Edition of the AMA Guides to the Evaluation of Permanent Impairment. In addition, claimant was given a rating at the request of respondent by orthopedic surgeon Dr. Queenan. Dr. Queenan opined that claimant had no permanent impairment. The ALJ found the opinion of Dr. Prostic regarding claimant's permanent impairment of function to be the more credible and persuasive and that his impairment rating should be given greater weight. The Board agrees. Claimant also argues that Dr. Queenan's impairment rating is not competent evidence because it was not given pursuant to the Guides.⁷ The Board finds that claimant is correct in this regard. Accordingly, the Board finds claimant's permanent impairment of function to be 15 percent to the body as a whole.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated January 12, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Patrick C. Smith, Pittsburg, KS
Jeffery R. Brewer, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

⁷ K.S.A. 44-510e(a).